UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

YOLANDA R. EFFINGER

v.

Plaintiff,

Case No. 2:07-CV-657-ID-TFM

WINN DIXIE MONTGOMERY, INC.

Defendant.

PLAINTIFF'S OBJECTIONS TO AND MOTION TO QUASH SUBPOENAS TO NON-PARTIES PEDIATRIC ADOLESCENT MEDICINE, INC., SELMA CITY SCHOOL BOARD, ALABAMA UNEMPLOYMENT COMPENSATION AND SELMA DOCTORS CLINIC, AND FOR STAY

Pursuant to Federal Rule of Civil Procedure 45(b)(1) and Federal Rule of Civil Procedure 26, Plaintiff objects to and moves to quash Defendant's subpoenas served on non-parties Pediatric Adolescent Medicine, Inc., Selma City School Board, Alabama Unemployment Compensation, and Selma Doctors Clinic ("Defendant's Subpoena-Exhibit A attached), on October 15, 2007.

Counsel for plaintiff wrote Defendant's counsel (Plaintiff's Exhibit B attached) and contacted him by e-mail (Plaintiff's Exhibit C) advising him of plaintiff's objections, but Defendant's counsel has not responded. Plaintiff therefore states that Defendant obviously opposes this motion.

As grounds for this objection and motion, Plaintiff states as follows:

1. Counsel for Plaintiff hereby certifies by attached affidavit (Exhibit D) that he was never served copies of the Defendant's subpoenas (Exhibit A) or received

- any prior notice thereof.
- 2. That such subpoenas are overly broad and otherwise seeks information which will not lead to discovery of admissible evidence.
- 3. That such subpoenas violate Plaintiff's right to privacy as guaranteed by the 1st and 14th Amendments to the U. S. Constitution. This 18th day of October, 2007.

/s/ Ronald B. Hatcher Ronald B. Hatcher (HAT 002) Attorney for Plaintiff P. O. Box 161442 Atlanta, GA 30321 (404) 526-9440

MEMORANDUM IN SUPPORT

A. Facts:

Plaintiff complaint is for damages by reason of a fall she sustained on Defendant's premises on August 20, 2006. (Complaint p. 2). Plaintiff has requested general damages and special damages for medical treatment, physical therapy, medical tests, loss wages, pain and suffering and future medicals. (Complaint, pp. 3-4).

The court is asked to specifically note that this is not an "employment case", "social security case", "disability case", or any like case which places in issue or dispute plaintiff's job performance, retention, discipline, or personnel files.

The court should also note that plaintiff has provided to Defendant, without waiving specific objections, her W-2s, tax returns, and employment history for the years 2003, 2004, 2005 and 2006.

B. Authorities:

(1) Non-Service:

F.R.C.P. 45(b)(1) provides is pertinent part that "... Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b)".

Here, service was purportedly made on plaintiff's counsel in compliance with F.R.C.P. 5(b). However, as evidenced by plaintiff's counsel attached affidavit (Exhibit D), he was never served with such subpoenas. Further, he had no notice of the subpoenas prior to October 16, 2007.

Additionally, in the body of Defendant's subpoenas (Exhibit A), there is evidence that Defendant may have confused the party to be served. Defendant's Notice of Service of Discovery Documents within Exhibit A refers to notice and service being perfected for Defendant Jackie David Church. There is no such defendant, party or witness in this matter. It is likely that service, if mailed or e-mailed, went to the wrong plaintiff. Further, the said notice of service lists the respondents but does not certify that plaintiff's counsel received a copy.

Having failed to comply with Civil Rules 45(b)(1) and 5(b), the subject subpoenas are defective and unenforceable.

(2) Breath of Requests:

As stated, plaintiff is seeking loss wages for a period beginning on August 20, 2006 and thereafter. No foundation is made or could be made that plaintiff's entire

employment and medical history and records are relevant or should be explored.

Nonetheless, Defendant has made open-ended, all encompassing requests for documents. Defendant's Schedule A of Exhibit A requests:

"All records of any kind including but not limited to new hire documents, applications, resumes, job description, evaluations, certifications, tests, training, adjustments, reprimands, discharge, documents, separation documents, disciplinary documents, payroll, W-2 forms, record of absences, doctor notes or excuses, reports of physical examinations, reports by any supervisors, emails, independent contractor contracts, 1099's, insurance, benefits, payroll, and any and all documents related to:

Yolanda Effinger DOB: 02/09/1963 SSN: ***.**4705

Emphasis Added.

Plaintiff submits the following examples of over-breath: "all records of any kind" and "any and all documents related to". These phrases encompass from "birth to death" and are impermissible. F.R.C.P. 26(b)(1). Fishing expeditions are not permitted under Civil Rule 26.

Plaintiff submits the following examples of irrelevancy: "evaluations", "disciplinary documents", and "benefits". Even a cursory reading of the complaint will not yield any relevance for these items. As well, Defendant's requests are not and were not intended to lead to the discovery of admissible evidence. Plaintiff has provided sufficient information to evaluate and contest her loss wage and medical claims. Again, Defendant is impermissibly fishing. F.RC.P. 26(b)(1)

C. Privacy:

Plaintiff hereby advises the court that her employment and medical records

contain information on her children, ex-husband and "female surgery" that has no relevance to the claims and defenses in this matter. Plaintiff has a privacy interest and expectation of privacy that she does not choose to waive.

Due to the breath and non-specific nature of Defendant's requests, Plaintiff's Constitutional right to privacy would be violated if same are allowed to stand. This is not what is envisioned or permitted under Civil Rules 26 and 45. See also the 1st and 14th Amendments to the U. S. Constitution.

WHEREFORE, Plaintiff prays for relief as follows:

- That the court enter a stay on Defendant's Subpoenas until this Objection
 Motion is decided;
- 2. That upon final consideration, Defendant's Subpoenas to Pediatric Adolescent Medicine, Inc., Selma City School Board, Alabama Unemployment Compensation, and Selma Doctors Clinic be quashed; and
- 3. That she be awarded such other relief, legal or equitable, to which she is entitled, including attorney's fees and costs.

/s/ Ronald B. Hatcher

Ronald B. Hatcher (HAT 002) Attorney for Plaintiff P. O. Box 161442 Atlanta, GA 30321 (404) 526-9440

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiff's Objections To and Motion To Quash Subpoenas and For Stay, together with proposed Orders were served on Defendant's Attorney, via e-mail transmission and by regular U. S. Mail, at the following address, to wit:

> Atty. Randall Morgan Hill, Hill, Carter, Franco, Cole, & Black, PC P. O. Box 116 Montgomery, AL 36101-0116

This 18th day of October, 2007.

/s/ Ronald B. Hatcher Ronald B. Hatcher (HAT 002) Attorney for Plaintiff P. O. Box 161442 Atlanta, GA 30321 (404) 526-9440

EXHIBIT "A"

SAO88 (Rev. 12/05) Subgoons in a Civil Cusp		
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	ES DISTRICT COUR	T
A 11-41-15-		Alabama
U .	ISTRICT OF	
Yolanda Effinger	SUBPOENA IN	A CIVIL CASE
V.		
Winn Dixie Montgomery Inc	Case Number: 1	2:07-CV-657-ID-TFM
TO: Pediatric Adolescent Medicine 618 Medical Center Parkway Suite A Selma, AL 36701		
YOU ARE COMMANDED to appear in the United testify in the above case.	States District court at the place,	date, and time specified below t
PLACE OF TESTIMONY	and the second s	COURTROOM
		DATE AND TIME
YOU ARE COMMANDED to appear at the place, d in the above case.	ate, and time specified below to te	estify at the taking of a deposition
PLACE OF DEPOSITION	1 8	DATE AND TIME
YOU ARE COMMANDED to produce and permit in place, date, and time specified below (list document		wing documents or objects at the
SEE ATTACHED SCHEDULE "A	!	
PLACE D. J. H. A. LED VIII C. J. S. C.	4.00	DATE AND TIME
Randali Morgan, Hill Hill Carter Franco Cole & Bla P O Box 116, Montgomery, AL 36101-0116	CK P.G.	10/22/2007 4:25 prn
☐ YOU ARE COMMANDED to permit inspection of	the following premises at the dat	te and time specified below.
PREMISES		DATE AND TIME
Any organization not a party to this suit that is subpocuace directors, or managing agents, or other persons who consent to matters on which the person will tealify. Federal Rules of Civ	cestify on its behalf, and may set fo	
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORN	NEY FOR PLAINT(FF OR DEFENDANT)	DATE 10/5/2007
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Randall Morgan, Hill Hill Carter Franco Cole & Black PC P O Box 116, Montgomery, AL 36101-0116	200000000000000000000000000000000000000	la esta esta esta esta esta esta esta est
(See Rule 45, Federal Rules of Civil Pro- If action is pending in district other than district of issuance, state district und	needing. Sybdivisions (c), (d), and (e), on next page der case number	

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	PR	OOF OF SERVICE
SERVED	10-15-07	PI.AČE :
SERVED ON (PRINT NAM	nE)	MANNER OF SERVICE
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Chris M	organ	
	DECLA	RATION OF SERVER
	nalty of perjury under the laws of see is true and correct.	the United States of America that the foregoing information contained
Executed on _	0-15-07	Chotho
	DATE	SIGNATURE OF SERVER 41.5 5. Parry St. YMONTGOMERY ST. ADDRESS OF SERVER
		ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006

10: PROTECTION OF PERSONS SCHIPCE TO SUBPORNAS

(1) A party or an attorney responsible for the issuance and service of a subpoent shall take reasonable steps to avoid imposing under burden or expense on a person subject to that subpoent. The court on behalf of which the subpoent was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate seachen, which may include, but is not limited to, lost comings and a reasonable anomey's fee

(2) (A) A parton commanded to produce and permit inspection, copying, testing, or sampling of designated electronically started information, books, papers, documents or tangible things, or inspection of promises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoons or before the time apacified for compliance if such time is fest than 14 days after service, service, service upon the party or anomey designised in the subpoons written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form of forms requested. If objection is mide, the party serving the subpoons that not be cutled to inspect upoy, test, or sends the materials or inspect the premises except pursuant to an order of the court by which the subpoons was issued. If objection has been made, the party serving the subpoons area, upon notice to the version commanded to produce, move at any time for an order to compal the production, inspection, copying, testing, or sampling. Such an order to compal shall protect any person who is not a party or an offleer of a party from significant expense residing from the inspection, copying, testing, or sampling commanded.

(5)(A) On finitely motion, the court by which is subposed was issued shall quash or modify the subposed if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a piece more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (o)(3 XB)(iii) of this mile, such a person may in order to attend trial be commanded to travel from any such place within the state in which the mild is held;

(iii) requires disclosure of privilaged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) Il'a subscana

fi) requires disclosure of a rade secret of other confidential research, development, or commercial information, or

(ii) requires disclosure of an unreasined expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of explosity, or

(iii) requires a person who is not a parry or an officer of a parry to incur substantial expense to wavel more than 100 miles to dittend trial, the court may, to protect a person subject

to or affected by the subpoents, guest or modify the subpoents or, if the party in whose behalf the subpoents is assect shows a substantial need for the testimony or material that station be otherwise met without under haddlip and assures that the person to whom the subpoent is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES BY RESPONDING TO SUBPLIENA.

(1) (A) A person responding to a subpoend to produce documents shall produce them as they are kept in the yaval ocurse of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not ejectify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms to which the person ordinarily maintain? If or in a form or forms that are reasonably stockle.

(C) A person responding to a subpoena need not produce the same electromically stored information in more than one form.

(D) A person responding to a subpostial need not provide discovery of electronically stored information from sources due the person identifies at not cascinably accreable because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information strugglet is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources (if the requesting pinry shows good rosts, considering the limitations of Ruis 26(b)(2)(C). The court may specific conditions for the discovery.

26(b)(2)(C). The equit may specify conditions for the discovery.

(2)(A) When information subject to a subspace is withhold on a claum that it is provileged or subject to protection as anal-preparation insterials, the claim shall be imade expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the documenting party to better the claim.

not produced that is sufficient to employ the demanding party to contest the claim (B) If information is produced in response to a subpoem that is subject to a claim of privilege or of protection as trial-preparation material, the person making the daim may notified any purty that received the information of the claim and the basis for it. After being notified a party milial promptly return, adjuster, or destroy the specified information and any express it has and may not use or disclose the information until the claim is regolved. A receiving party may promptly present the information to the court under soal for a determination of the claim. If the receiving party disclosed the information before being notified, it must lake reasonable steps to remieve it. The person who produced the information must preserve the information until the claim is resolved.

(a) CONTEMPT. Pathers of any person without adequate excuse to obey a subposs served upon that person may be deemed a contempt of the court from which the subpossal issued. An adequate course for failure to obey exists when a subpossal purpose to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (3)(5)(A).

SCHEDULE "A"

In lieu of appearing:

All records of any kind including but not limited to new hire documents, applications, resumes, job description, evaluations, certifications, tests, training, adjustments, reprimands, discharge documents, separation documents, disciplinary documents, payroll, W-2 forms, records of absences, doctor notes or excuses, reports of physical examinations, reports by any supervisors, emails, independent contractor contracts, 1099's, insurance, benefits, payroll, and any and all documents related to:

Yoland Effinger DOB: 02/09/1963 SSN: ***-**-4705

HEATH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT CERTIFICATION REGARDING SUBPOENA

I, RENA']. RUSSELL, CP, hereby certify that the statement below is true and accurate.

The individual named in the attached subpoena and/or the legal representative has been given the opportunity to object, and all of the following are correct.

- A good faith arrempt has been made to provide written actice to the individual (or, if (4) the individual's location is unknown, to mail a notice to the individual's last known address); and
- (B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
- The time for the individual to talse objections to the court or administrative tribunal (C)has elapsed, and:
 - No objections have been filed; or (2) All objections filed by the individual (1)have been resolved by the court of the administrative tribunal and the disclosures being sought are consistent with such resolution.

(See attached notice that was forwarded to the individual and/or representative.)

Signed:

Certified Paralegal HILL HILL CARTER FRANCO COLE & BLACK, P.C. 425 South Perry Street Montgomery, AL 36104 (334) 386-4365

Pursuant to: Rule 34 ARCP; 45 CFR § 164.512(c)

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

YOLANDA R.	EFFINGER,	*	
		*	
F	Plaintiff,	*	
		*	i
v,	*	Case No.: 2:07-CV-657-ID-TFM	
		*	
WINN-DIXIE MO	MONTGOMERY, INC.	*	
	,	*	
	Defendant.	*	

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

PLEASE TAKE NOTICE that the following discovery documents have been served upon the Plaintiff on behalf of Defendant Jackie David Church:

	Interrogatories Answers to Interrogatories Request for Production Response to Request for Production	
	Request for Admissions Response to Request for Admissions	
	Notice of Deposition Other:	
X	Notice of Intent to Serve Subpoena:	Selma City School Pediatric Adolescent Unemployment Comp Selma Doctor Clinic

ISI Randall Morgan RANDALL MORGAN [MOR037] Defendant Winn-Dixie Montgomery, Inc.

1

OF COUNSEL:
HILL, HILL, CARTER, FRANCO,
COLE & BLACK, P.C.
425 South Perry Street
P.O. Box 116
Montgomery, Alabama 36101-0116
(334) 834-7600
(334) 263-5969. FAX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served via E-Mail and by placing a copy of same in the U.S. mail, properly addressed and first class postage prepaid this the All day of October, 2007 upon the following:

Ronald B. Hatcher, Esq. P.O. Box 161442 Atlanta, GA 30321

1s1 Randall Morgan
OF COUNSEL

3209

TRANSMISSION OK

EXHIBIT "B"

TX/RX NO
CONNECTION TEL
SUBADDRESS
CONNECTION ID

13342635969

CONNECTION ID ST. TIME USAGE T PGS. SENT

RESULT

10/16 17:12 00:37

OK

RONALD B. HATCHER ATTORNEY AT LAW ATLANTA, GA 30303

(404) 526-9440 (Office) (404) 526-9936 (Facsimile)

Muiling Address. P.O. Box 161442 Atlanta, GA 30321 Licensed In: AL, GA, OH, DC

October 16, 2007

Via (334) 263-5969

Mr. Randall Morgan, Esq. Hill, Hill, Carter, Franco, Cole & Black P. O. Box 116 Montgomery, AL 36101

> Re: Yolanda Effinger v. Winn Dixie Case No. 2:07-CV-657-ID-TFM

Dear Mr Morgan:

I have been advised that you have subpoenaed employment records from Dr. Patricia Robinson, Selma, Alabama. I am by copy of this letter advising Dr. Robinson that I object to the subpoena on the following grounds: (1) I did not get notice of and time to object to the subpoena as required by the federal rules of civil procedure, and (2) I object to any payroll records being disclosed because we are not seeking lost wages from this past employment.

I would appreciate your forwarding a copy of the third party subpoena to me for further response.

, , ,

Ronald B. Hatcher Cc: Dr. Patricia Robinson Via (334) 874-9585

Plaintiff

EXHIBIT "C" Page 1

From: rhatch05@aol.com
To: pferrara@hillhillcarter.com
Subject: Effinger v. Winn Dixie
Date: Tue, 16 Oct 2007 5:42 pm

Attachments: Effinger_Dr._Robinson_10.16.07.doc (26K)

See Attachment objecting to subpoena to Dr. Patricia Robinson.

Atty. Ron Hatcher

Email and AIM finally together. You've gotta check out free AOL Mail!

EXHIBIT "C"
Page 2
RONALD B. HATCHER
ATTORNEY AT LAW
ATLANTA, GA 30303

(404) 526-9440 (Office) (404) 526-9936 (Facsimile)

Mailing Address: P. O. Box 161442 Atlanta, GA 30321 Licensed In: AL, GA, OH, DC

October 16, 2007

Via (334) 263-5969

Mr. Randall Morgan, Esq. Hill, Hill, Carter, Franco, Cole & Black P. O. Box 116 Montgomery, AL 36101

> Re: Yolanda Effinger v. Winn Dixie Case No. 2:07-CV-657-ID-TFM

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I would appreciate your forwarding a copy of the third party subpoena to me for further response.

Sincerely,

/s/ Ronald B. Hatcher

Ronald B. Hatcher Cc: Dr. Patricia Robinson Via (334) 874-9585 Plaintiff v.

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

YOLANDA R. EFFINGER

Plaintiff,

Case No. 2:07-CV-657-ID-TFM

WINN DIXIE MONTGOMERY, INC.

Defendant.

EXHIBIT D

AFFIDAVIT OF RONALD B. HATCHER, ESQ

I, Ronald B. Hatcher, Esq., being first duly sworn, hereby state as follows:

That I am of legal age and have personal knowledge of the facts contained in this affidavit.

That I am trial counsel for Plaintiff and her sole counsel of record.

The court is hereby advised of the following:

- 1. I have personally reviewed my office file in this matter. Neither my office or I received any service or service copies of Defendant's Rule 45 Subpoenas to Pediatric Adolescent Medicine, Inc., Selma City School Board, Alabama Unemployment Compensation or Selma Doctors Clinic (Exhibit A).
- 2. I have personally reviewed my personal e-mail. I did not receive an e-mail with such subpoenas attached (Exhibit A) on October 5, 2007 or any time thereafter. In fact, I did not receive any e-mails from Defendant on October 5, 2007.

- 3. I did not have any knowledge of Defendant's intent to serve such subpoenas or the actually issuance or service of such subpoenas prior to October 16, 2007, when so advised by Plaintiff.
 - 4. I was not afforded any prior opportunity to object to such subpoenas;
- 5. That Defendant's counsel has not responded to my written objections to him of October 16, 2007 and my attempts to settle these issues without court intervention; and
- 6. That her arguments and authorities considered, Plaintiff would be irreparably harmed if either a stay was not impose against immediate compliance with such subpoenas or such subpoenas were not immediately quashed.

This 18th day of October, 2007.

/s/ Ronald B. Hatcher

Ronald B. Hatcher, Esq.

Sworn to and Subscribed before me this 18th day of October, 2007.

/s/ Gwendolyn B. Hatcher

Notary Public State of Georgia, At Large

Commission Expires: March 7, 2010



UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

YOLANDA R. EFFINGER Plaintiff, Case No. 2:07-CV-657-ID-TFM v. WINN DIXIE MONTGOMERY, INC. Defendant.

TEMPORARY STAY

This matter comes before the Court on Plaintiff's Objections to and Motion to Quash Defendant's Non-Party Subpoenas of October 15, 2007. Upon consideration of Plaintiff's request for a temporary stay contained therein, and Defendant's response to such request, it is HEREBY:

ORDERED that required compliance with such subpoenas heretofore served on Pediatric Adolescent Medicine, Inc., Selma City School Board, Alabama Unemployment Compensation, and Selma Doctor's Clinic is hereby STAYED pending further order of this court.

It is further ORDERED that a copy of this Order by forthwith served on said nonparties by counsel for plaintiff. SO ORDERED this ______ day of _______, 2007.

United States District Judge

v.

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

YOLANDA R. EFFINGER *

Plaintiff,

* Case No. 2:07-CV-657-ID-TFM

*

*

WINN DIXIE MONTGOMERY, INC.

*

Defendant.

ORDER

This matter comes before the Court on Plaintiff's Objections to and Motion to Quash Defendant's Non-Party Subpoenas of October 15, 2007. Upon consideration of such objections and motion, and Defendant's response thereto, it is HEREBY:

ORDERED that Plaintiff's Motion to Quash Defendant's Subpoenas of October 15, 2007 to Pediatric Adolescent Medicine, Inc., Selma City School Board, Alabama Unemployment Compensation, and Selma Doctor's Clinic is GRANTED.

SO ORDERED this	day of	, 2007.
	United States Di	istrict Judge